

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

DEC 19 2005

SHERMAN DIVISION

DAVID J. MALAND, CLERK
BY
DEPUTY

JAMES DWAYNE ORTEGA §
VS. § CIVIL ACTION NO. 4:05cv271
UNITED STATES OF AMERICA §

MEMORANDUM ORDER OVERRULING MOVANT'S OBJECTIONS AND PARTIALLY
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Movant James Dwayne Ortega, an inmate confined at the Federal Correctional Institution in Forrest City, Arkansas, proceeding pro se, brought this motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

The court referred this matter to the Honorable Don D. Bush, United States Magistrate Judge, at Sherman, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the motion be dismissed as successive and barred by limitations.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Movant filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. See FED. R. CIV. P. 72(b).

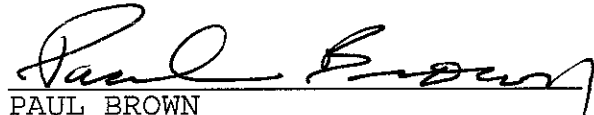
Movant asserts that his pleadings were not an attempt to file a second or successive motion to vacate sentence. Instead, Movant

claims he was attempting to present information to the court concerning a previous habeas proceeding pursuant to Rule 60(b). Movant has previously filed a motion to vacate, set aside or correct sentence in this court which was denied and dismissed. See *Ortega v. United States*, No. 4:02cv97 (E.D. Tex. July 3, 2003). To the extent Movant is attempting to file a pleading in his previous motion to vacate sentence, the Clerk should be directed to file in civil action no. 4:02cv97 the pleading which forms the basis of the above-styled action. Accordingly, the report of the Magistrate Judge should be adopted to the extent it recommends dismissal.

O R D E R

Accordingly, Movant's objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the magistrate judge is **ADOPTED**. The Clerk of Court is **DIRECTED** to file Movant's pleadings as a motion for relief from judgment in civil action no. 4:02cv97. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

SIGNED this 19 day of December, 2005.


PAUL BROWN
UNITED STATES DISTRICT JUDGE